THE HON'BLE MS JUSTICE G. ROHINI

WRIT PETITION NO.9145 of 2004

Dated 20-03-2006

Between:

Gavirneni Basavarao.

….Petitioner

and

The Commissioner of Endowments,

Hyderabad and two others.

….Respondents

THE HON'BLE MS JUSTICE G. ROHINI

WRIT PETITION NO.9145 of 2004

ORDER:

This writ petition is filed seeking a declaration that the action of the third respondent in proposing to auction the leasehold rights in respect of wet land to an extent of Acs.4.17 cents in survey No.234 situated in Chodavaram village, Penamaluru Mandal, Krishna District, is arbitrary and illegal.

The petitioner claims that under a registered lease deed dated 24-07-1990, the leasehold rights in respect of the land in question were granted in his favour and since then he has been in continuous possession and enjoyment of the same by paying the rents regularly. It is also stated that though the total extent is Acs.4.17 cents, he is actually cultivating Acs.2.09 cents and the remaining land of Acs.2.08 cents is being cultivated by his son - Gavirneni Haribabu. It is also stated that in the proceedings of the third respondent dated 03-06-2003 it was found that both the petitioner and his son are cultivating the land in question. Thus according to the petitioner, he is a landless poor person within the definition of the explanation to proviso to Section 82 (2) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, (hereinafter referred to as 'the Act') and thus entitled to continue in possession. However, the third respondent has been taking steps to evict the petitioner and that apart a notice was also issued on
07-05-2004 proposing to auction the leasehold rights in respect of the land in question. Hence, this writ petition.

A counter affidavit has been filed by the third respondent stating that since the petitioner is in possession of Acs.4.17 cents of wet land, he cannot be treated as a landless poor person and even assuming that there is any partition among the petitioner and his sons, the same cannot be accepted.

I have heard the learned counsel for both the parties.

Under Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Land Rules, 2003 under G.O.Ms.No.379 dated 11-03-2003 (hereinafter referred to as 'the Rules'), if any cultivating tenant claims to be a landless poor person, the same has to be enquired into by the Assistant Commissioner, having territorial jurisdiction and, has to decide whether the cultivating tenant is a landless poor person as defined under Section 82 of the Act after giving a reasonable opportunity to the cultivating tenant as well as the executive authority of the concerned institution.

In the case on hand, since the petitioner claims that he is in possession of Acs.2-09 cents and the rest of the land of Acs.2-08 cents is in possession of his son and proceedings to that effect have been issued by the third respondent-Executive Authority on 03-06-2003, the Assistant Commissioner of Endowments, Vijayawada, is required to conduct an enquiry as contemplated under Rule 3 of the Rules. Since no such enquiry has been conducted, I deem it appropriate to dispose of the writ petition granting liberty to the petitioner to make an application before the second respondent with all the necessary material to support his claim that he is a landless poor person. If any such application is made within a period of two weeks from today, the second respondent, after conducting the necessary enquiry, shall pass appropriate orders in accordance with law within a period of two weeks thereafter. Till such time, the petitioner shall not be dispossessed from the land in question.

The writ petition is accordingly disposed of. No costs.

(G. ROHINI, J)

Date: 20-03-2006

Note:

Issue CC in two days.

B/o

ghn